



# UNITED STATES PATENT AND TRADEMARK OFFICE

10  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,868	07/23/2001	Theodore W. Watler	018684001310	4209
20350	7590	09/22/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			LY, NGHI H	
			ART UNIT	PAPER NUMBER
			2686	
DATE MAILED: 09/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/911,868	WATLER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Nghi H. Ly	2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-128 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-128 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>5,7</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2, 24, 46, 67, 87 and 109 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis et al (US 5,684,861).

Regarding claims 2, 24, 46, 67, 87 and 109, Lewis teaches a system for determining a charge (see abstract) in connection with a data communication session (see fig.1), comprising: a wireless device capable of communicating with a network (see fig.1), and a data rating application residing in the wireless device (see column 9 line 60 to column 10 line 11), wherein the data rating application is configured to use a metering method to meter the data communication session (see column 2, lines 45-53 and column 4, lines 59-66) and a rating method (see column 9 line 60 to column 10 line 11) to be used in conjunction with the metering method (see column 2, lines 45-53 and column 4, lines 59-66) to determine the charge in connection with the data communication session (see column 5 lines 45 to column 6, line 65).

Regarding claims 3, 25, 47, 68, 88 and 110, Lewis further teaches the wireless device is a mobile phone (see fig.1, mobile phone 2).

Regarding claims 4, 26, 48 and 89, Lewis further teaches the metering method is selected from a plurality of metering methods (see column 2, lines 45-53 and column 4, lines 59-66).

Regarding claims 5, 27, 49 and 90, Lewis further teaches the rating method is selected from a plurality of rating methods (see column 9 line 60 to column 10 line 11).

Regarding claims 6, 28, 50, 69, 91 and 111, Lewis further teaches the data rating application is configured to cooperate with an accounting application to update an account relating to the wireless device (see column 1, lines 34-39 and see column 9, lines 41-59).

Regarding claims 7, 29, 51, 70, 92 and 112, Lewis further teaches the accounting application resides in the wireless device (see column 9, lines 41-59).

Regarding claims 9, 31, 53, 72, 94 and 114, Lewis further teaches the data rating application is configured to select the rating method and the metering method upon detecting a set-up event which takes place during the course of setting up the data communication session, and wherein the set-up event is originated by either the network or the wireless device to indicate that the data communication session is to begin (column 3, lines 13-29, see "tracks the duration and time", and see column 6, lines 16-19, "determine the date and time at which a telephone call begins and ends").

Regarding claims 10, 32, 54, 73, 95 and 115, Lewis further teaches the data rating application is configured to begin determining the charge in connection with the data communication session using the metering method and the rating method upon detecting a begin event which takes place during the course of the data communication

session; and wherein the begin event is originated by either the network or the wireless device to indicate that the data communication session has begun (column 3, lines 13-29, see "tracks the duration and time", and see column 6, lines 16-19, "determine the date and time at which a telephone call begins and ends").

Regarding claims 11, 33, 55, 74, 96 and 116, Lewis further teaches the data rating application is configured to end determining the charge in connection with the data communication session using the metering method and the rating method upon detecting an end event which takes place during the course of the data communication session; and wherein the end event is originated by either the network or the wireless device to indicate that the data communication session has ended (column 3, lines 13-29, see "tracks the duration and time", and see column 6, lines 16-19, "determine the date and time at which a telephone call begins and ends").

Regarding claims 12, 34, 75, 97 and 117, Lewis further teaches the data rating application resides on a smart card which is attachable to the wireless device (column 12, lines 6-9, see "card 18", "function code" or see fig.4 for function codes and fig.5, for card 18, and see column 11, lines 30-34 and see column 6, lines 9-19).

Regarding claims 13, 35, 56, 76, 98 and 118, Lewis further teaches the wireless device includes a plurality of additional applications residing therein (see abstract), and wherein the data rating application is configured to select one of the plurality of rating methods based on which one of the plurality of additional applications residing in the wireless device (column 3, lines 13-29, see "tracks the duration and time", column 9, lines 60 to column 10, lines 11, "calculates the current off-peak", "calculates the number

of remaining free time" and "calculate the total cost") will be using data received by the wireless device during the data communication session (see fig.1, wireless connection between wireless device and base station 4).

Regarding claims 14, 36, 57, 77, 99 and 119, Lewis further teaches the data rating application is configured to use a rating method based on usage of data received during the data communication session (see column 4, lines 62-66).

Regarding claims 21, 43, 64, 84, 106 and 126, Lewis further teaches the plurality of metering methods includes a metering by time method; and wherein the metering by time method determines the charge in connection with the data communication session based on duration of the data communication session (see column 3, lines 13-19 and column 6, lines 20-26).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 8, 30, 52, 71, 93 and 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of the Applicant's admitted prior art.

Regarding claims 8, 30, 52, 71, 93 and 113, Lewis teaches the system according to claim 6. Lewis does not specifically disclose the accounting application resides at a location external to the wireless device.

The Applicant's admitted prior art teaches the accounting application resides at a location external to the wireless device (see Applicant's background of the invention, pages 1-2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Applicant's admitted prior art into the system of Lewis in order to reduce the burden on the wireless communication device.

6. Claims 15, 37, 58, 78, 100 and 120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of Drosset et al (US 6,662,231).

Regarding claims 15, 37, 58, 78, 100 and 120, Lewis teaches the system according to claim 14. Lewis does not specifically disclose the data received during the

data communication session is a downloaded application, and wherein the charge is determined based on occurrence or duration of usage of the downloaded application.

Drosset teaches the data received during the data communication session is a downloaded application (see column 1, lines 13-17, column 2, lines 44-46, column 3, lines 7-20 and fig.19, for wireless connections between wireless communication devices and the wireless network), and wherein the charge is determined based on occurrence or duration of usage of the downloaded application (see column 15, lines 58-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Drosset into the system of Lewis in order to customize audio service to a user over a communication link through communication network (see Drosset, column 1, lines 6-10).

7. Claims 16, 20, 38, 42, 59, 63, 79, 83, 101, 105, 121 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of Chuah et al (US 6,400,695).

Regarding claims 16, 38, 59, 79 101 and 121, Lewis teaches the system according to claim 5. Lewis does not specifically disclose the data rating application is configured to select one of the plurality of rating methods based on source of data received by the wireless device during the data communication session.

Chuah teaches the data rating application is configured to select one of the plurality of rating methods based on source of data received by the wireless device during the data communication session (see column 15, lines 29-32).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Chuah into the system of Lewis in order to provide method and apparatus for providing access priority control in a media access control protocol of a universal mobile telecommunication system (see Chuah, column 1, lines 21-27).

Regarding claims 20, 42, 63, 83, 105 and 125, the combination of Lewis and Chuah further teaches the plurality of metering methods includes a metering by connection method; and wherein the metering by connection method determines the charge in connection with the data communication session based on a connection for the data communication session being established see column 15, lines 29-32).

8. Claims 17, 19, 39, 41, 60, 62, 80, 82, 102, 104, 122 and 124 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of Solondz (US 6,192,248).

Regarding claims 17, 39, 60, 80, 102 and 122, Lewis teaches the system according to claim 5. Lewis does not specifically disclose the data rating application is configured to select one of the plurality of rating methods based on service level selected for the data communication session.

Solondz teaches the data rating application is configured to select one of the plurality of rating methods based on service level selected for the data communication session (see column 6, lines 17-26).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Solondz into the system of Lewis in order to customize service in accordance with a user profile in a wireless communication system (see Solondz, column 1, lines 9-13).

Regarding claims 19, 41, 62, 82, 104 and 124, the combination of Lewis and Solondz further teaches the data rating application is configured to select one of the plurality of rating methods based on service level achieved during the data communication session (see Solondz column 6, lines 17-26).

9. Claims 18, 40, 61, 81, 103 and 123 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of Solondz (US 6,192,248) and further in view of Kaku (US 6,542,728).

Regarding claims 18, 40, 61, 81, 103 and 123, the combination of Lewis and Solondz teaches the system according to claim 17. The combination of Lewis and Solondz does not specifically disclose the service level selected relates to speed and/or accuracy of data transmission during the data communication session.

Kaku teaches the service level selected relates to speed and/or accuracy of data transmission during the data communication session (see column 3, line 26-35).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Kaku into the system of Lewis and Solondz so that the user could have a selection of how fast the data to be transmitted.

10. Claims 22, 23, 44, 45, 65, 66, 85, 86, 107, 108, 127 and 128 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al (US 5,684,861) in view of Dunn et al (US 5,625,877).

Regarding claims 22, 44, 65, 85, 107 and 127, Lewis teaches the system according to claim 4. Lewis does not specifically disclose the plurality of metering methods includes a metering by volume method and wherein the metering by volume method determines the charge in connection with the data communication session based on volume of data transmitted and/or received by the wireless device during the data communication session.

Dunn teaches the plurality of metering methods includes a metering by volume method and wherein the metering by volume method determines the charge in connection with the data communication session based on volume of data transmitted and/or received by the wireless (see column 2, lines 23-33).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of the Dunn into the system of Lewis in order to allow a user of a mobile communication user to be allocated wireless variable bandwidth on demand by aggregating variable air-link communication channel.

Regarding claims 23, 45, 66, 86, 108 and 128, the combination of Lewis and Dunn further teaches the metering by volume method further includes metering on a per kilobyte basis, metering on a per packet basis or metering on a predetermined denomination basis (see column 2, lines 23-33).

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Dent (US 6,098,878) teaches tariff management apparatus and method for communications terminals using smart cards.
- b. Alperovich (US 6,138,002) teaches system and method for providing services based on broadcasted system information.
- c. Wallenius (US 6,760,417) teaches charging method in telecommunications network.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi H. Ly whose telephone number is (703) 605-5164. The examiner can normally be reached on 8:30 am-5:30 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nghi H. Ly

(D10

29/14/04

*Marsa D. Banks-Harold*

MARSHA D. BANKS-HAROLD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600